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12
13 IN THE UNITED STATES BANKRUPTCY COURT
14
15 NORTHERN DISTRICT OF CALIFORNIA
16
17 SANTA ROSA DIVISION
18

19 In re:) Case No. 11-13062
20)
21) Adversary No.
22 MICHAEL WAYNE SILVAS and)
23 JILL RAE SILVAS,) Chapter 11
24 Debtors.)
25)
26) COMPLAINT TO DETERMINE
27) DISCHARGEABILITY OF DEBT
28) [11 U.S.C. § 523(a)(4)]
29 AMERICAN CONTRACTORS INDEMNITY)
30 COMPANY,)
31)
32 Plaintiff,)
33)
34 v.)
35)
36)
37 MICHAEL WAYNE SILVAS,)
38)
39 Defendant.)
40)

41 AMERICAN CONTRACTORS INDEMNITY COMPANY ("Plaintiff or ACIC") hereby
42 complains against MICHAEL WAYNE SILVAS ("Debtor or Defendant") as follows:

43 1. This Court has jurisdiction of this core proceeding pursuant to **28 U.S.C.**

1 **§157(b)(2)(I) and 28 U.S.C. § 1334.** Venue is proper under **U.S.C. § 1409** since Debtor's
2 Chapter 7 case is pending in this district.

3 2. ACIC is a corporation doing business in the State of California.

4 3. Defendant is an individual residing in Napa, California.

5 4. Defendant filed a voluntary Chapter 11 bankruptcy petition in this Court,
6
7 commencing this case on August 17, 2011 ("Petition Date").

8 **FIRST CLAIM FOR RELIEF**

9 [11 U.S.C. §§523(a)(4)]

10 5. Plaintiff adopts and realleges each and every allegation set forth in paragraphs 1
11 through 4 above as though fully set forth herein.

12 6. On or about February 2, 2001, Defendant's Uncle, Eugene Silvas ("Decedent")
13 died.

14 7. On or about March 31, 2001, Defendant and his father, Eugene Silvas
15 ("Eugene") were appointed by the Superior Court of California, County of Los Angeles, Case
16 No. EP 005505 (hereinafter "Probate Court") as Special Co-Administrators (collectively
17 "Special Administrators") of the Decedent's Estate (the "E. Silvas Probate Estate"). The
18 Probate Court ordered that the Special Administrators post a bond in the amount of \$350,000.
19 At Defendant's request, ACIC posted a \$350,000 Administrator's Bond (Bond No. 47487) on or
20 about April 18, 2001.

21 8. Subsequent thereto, on or about June 29, 2001, the Special Administrators were
22 appointed as Co-Administrators of the Silvas Probate Estate (collectively "Administrators").
23 Prior to this appointment, at Defendant's request, ACIC issued an additional Administrator's
24 Bond for the benefit of the E. Silvas Probate Estate in the penal sum of \$525,000 (Bond No.
25 49284).

1 9. On or about January 18, 2008, the Administrators filed their First and Final
2 Account of the E. Silvas Probate Estate. The Probate Court denied this Final Account without
3 prejudice on December 19, 2008.

4 10. On or about August 27, 2008, Alex Borden ("Borden") filed a petition to remove
5 the Administrators.

6 11. On December 19, 2008, the Probate Court removed the Administrators and
7 appointed Borden as Successor Administrator to the E. Silvas Probate Estate.

8 12. On or about August 28, 2009, Borden filed a Petition seeking to surcharge the
9 Administrators in the amount of \$1,031,214.98, plus attorney fees and costs ("Surcharge
10 Motion").
11

12 13. Borden's Surcharge Motion alleged that the Administrators made unauthorized
13 and inappropriate distributions, made unauthorized loans from the E. Silvas Probate Estate to
14 themselves or to entities owned by them, all without Probate Court approval or notice to the
15 heirs of the E. Silvas Probate Estate.
16

17 14. The Administrators did not file any opposition to Borden's Surcharge Motion. On
18 December 19, 2009, the Probate Court granted Borden's Surcharge Motion ("Surcharge
19 Judgment").
20

21 15. The Surcharge Judgment was not timely appealed and became final for
22 purposes of enforcement no later than 180 days after December 19, 2009.
23

24 16. In full satisfaction of Administrator's Bond No. 49284 in the penal sum of
25 \$525,000, on March 9, 2011, ACIC delivered check number 31705, in the sum of \$525,000 to
26 Borden for the benefit of the E. Silvas Probate Estate.
27

1 17. On March 9, 2011, Borden executed an Acknowledgment of Satisfaction of the
2 Surcharge Judgment as to ACIC.

3 18. Thereafter on April 21, 2011, ACIC filed a Motion for Judgment against the
4 Defendant pursuant to the provisions of California Civil Procedure §§ 882 and 883, and Civil
5 Code §2847. On June 24, 2011 the Probate Court entered Judgment in favor of ACIC and
6 jointly and severally against the Administrators in the amount of \$538,317.28 for breach of their
7 fiduciary duties to the E. Silvas Probate Estate.("ACIC Judgment").
8

9 19. On June 15, 2011, Borden filed a Motion for Entry of Bond Judgment jointly and
10 severally against the Defendant, in his capacity as a Special Administrator, and ACIC ("Bond
11 Motion")(relating to Bond No. 47487 in the amount of \$350,000). The hearing on Borden's
12 Bond Motion was heard on August 26, 2011. The Probate Court heard and denied the
13 Borden's Bond Motion did not go forward.
14

15 20. Because of Defendant's breaches of his fiduciary duties to ACIC and the E.
16 Silvas Probate Estate, ACIC paid \$525,000 on the Administrator Bond No. 49284 it issued on
17 behalf of the Defendant.
18

19 21. ACIC not only paid the sum of \$525,000, but has also incurred necessary costs
20 and expenses in collection of the Surcharge Judgment, in a sum no less that \$13,317.28.
21

22 22. As surety on the Special Administrator's Bond No. 47487, if and when Defendant
23 is surcharged by the Probate Court, ACIC may or will be liable to the E. Silvas Probate Estate
24 for all sums so surcharged, up to the penal sum of its bond, totaling \$350,000. If and when
25 ACIC pays the E. Silvas Probate Estate for such losses, ACIC's contingent right to subrogation
26 will become perfected by operation of law to the rights of the E. Silvas Probate Estate against
27
28

1 Defendant (at the time that ACIC issued its bond it had a contingent subrogation claim against
2 Defendant, a claim that perfects or matures upon such payment).

3 **WHEREFORE**, Plaintiff requests entry of an Order/Judgment.

4 1. Determining that the debt of Michael Wayne Silvas owed to ACIC evidenced by
5 the ACIC Judgment is nondischargeable pursuant to 11 U.S.C. §523(a)(4);
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7 2. Determining that the debt Michael Wayne Silvas owes to ACIC for payment, if
8 any, ACIC in the future may make to the E. Silvas Probate Estate as it relates to the \$350,000
9 Special Administrator's Bond No. 47487 is nondischargeable pursuant to 11 U.S.C. §
10 523(a)(4).
11


12 3. Awarding ACIC its attorneys' fees and costs according to proof incurred in
13 connection with this adversary proceeding as part of its Judgment herein;

14 4. Determining all sums awarded to ACIC herein are nondischargeable pursuant
15 to 11 U.S.C. §523(a)(4); and
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17 5. Such other relief as the Court deems just.

18 Date: November 14, 2011

PAGTER AND MILLER

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20 By: /s/ Misty Perry Isaacson – CA SBN 193204
21 MISTY PERRY ISAACSON
22 Attorneys for ACIC
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